IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

CRP.No. 207 of 2004(F)

CMA.8/2003 OF SUB COURT, CHERTHALA
I.A.NO.635/2002 IN OS.777/1999 of PRL.MUNSIFF COURT, CHERTHALA

REVN. PETITIONER: APPELLANT/PETITIONER.

DAYANANDA BABU, AGED 37,
S/O.RAJAPPAN, RAJAMANDIRAM,
PATTANAKKAD VILLAGE,
CHERTHALA TALUK.

BY ADV. SRI.SHAJI THANKAPPAN

RESPONDENTS: RESPONDENTS/RESPONDENTS.
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1. STATE OF KERALA, REP. BY
DISTRICT COLLECTOR,
ALAPPUZHA DISTRICT.

2. THE VILLAGE OFFICER,
PATTANAKKAD VILLAGE,
CHERTHALA.

3. THE STATE BANK OF TRAVANCORE,
PATTANAKKAD BRANCH,
REP. BY ITS BRANCH MANAGER.

R3 BY ADV. SRI.SATHISH NINAN
SMT.SREELEKHA PUTHALATH
R1 & R2 BY GOVERNMENT PLEADER SRI.K.G.BHASKARAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 207 OF 2004 F

Dated this the 16th day of November, 2007

O R D E R

The plaintiff in O.S.No.777 of 1999, on the file of the Court of the Principal Munsiff of Cherthala, is the revision petitioner. The suit was filed by him for an injunction seeking to restrain the respondents from initiating revenue recovery proceedings. The petitioner had availed a loan from the State Bank of Travancore. When he defaulted repayment of the loan amount, revenue recovery proceedings were initiated against him. At that juncture, the suit was filed.

2. The suit was listed for trial on 11.1.2002. The revision petitioner/plaintiff did not appear on that date. Though a request for adjournment was made on his behalf, the court below was not inclined to grant the prayer. The suit was accordingly, dismissed for default. The petitioner filed an application under Order IX Rule 9 of the Code of Civil Procedure to restore the suit. There was a delay of 31 days in filing the application for restoration. The petitioner contended that on 11.1.2002, he could not appear before Court as he was admitted in the hospital on 10.1.2002 due to viral fever. He produced a medical certificate. The petitioner sought to explain the delay of 31 days by pointing out that there was a general strike by the Government employees from 6.2.2002,

which paralyzed the working of the Courts and, therefore, he could not file the application for restoration within time.

3. The trial court rejected the application for condonation of delay and consequently, the application for restoration was also dismissed. The trial court held that there is no evidence to indicate that the petitioner was suffering from viral fever. Though the medical certificate was produced, the Doctor who issued the same was not examined.

4. The petitioner challenged the order passed by the trial court in appeal, namely, C.M.A.No.8 of 2003, on the file of the Sub Court, Cherthala. The Appellate Court confirmed the order passed by the trial court. The Appellate Court held that even if the staff of the court were on strike, the petitioner could have presented the application before the learned Munsiff. The Appellate Court also held that there is no evidence to prove that the petitioner was laid up with viral fever on the date on which the suit was posted for trial.

5. The petitioner has not even cared to adduce oral evidence to substantiate the contentions raised by him. Non-examination of the petitioner before Court is sufficient to hold that he has not satisfactorily explained the delay as well as the reason for his non-appearance on the

date fixed for trial. The court below, on considering the facts and circumstances of the case, held that the petitioner has not made out a case for condoning the delay and allowing the application for restoration of the suit. It is to be noted that the suit is of the year 1999. The prayer is for an injunction restraining the respondents from initiating revenue recovery proceedings. I have gone through the copy of the plaint. On going through the averments in the plaint, I am not satisfied that the petitioner has an arguable case before the Court. Apart from all technicalities, I thought that I could grant the prayer for restoration, provided, the petitioner has a reasonably good case to urge before the Court. I do not think that the petitioner has a reasonably good case to urge before the trial court. I am of the view that the petitioner has not made out any ground for interference with the concurrent findings of the court below, invoking Section 115 of the Code of Civil Procedure.

The Civil Revision Petition fails and it is accordingly, dismissed.

(K.T.SANKARAN)
Judge

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